S.B. CIVIL SECOND APPEAL NO.169/2004
(Nathu Ram throuhg LRs Vs. Vikas Adhikari & Ors.)

Date :: 15.03.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.N.S. Acharya, for the appellants.
Mr.P.Nayak, for the respondents.

Heard learned counsel for the parties.

The plaintiff filed a suit for declaration and injunction alleging that the defendant encroached upon the land of way. According to plaintiff, originally the width of the way was 13 ft. but since the defendant raised the construction of latrine over the part of the land of way after obtaining permission from the Gram Panchayat the width of the way is now 5 ft. only.

The defendant after denying the allegations of the plaintiffs submitted that in fact the alleged way is only a shortcut way to reach temple and was not 13 ft. wide road. The defendant submitted that he purchased the property by registered sale deed. Obtained the permission from Gram Panchayat. The Gram Panchayat before granting permission issued public notice and inspected the site also which was signed by the villagers.

Learned counsel for the appellant vehemently submitted that the two courts below committed serious error of law and failed to appreciate the facts of the case. It is submitted that the plaintiff

produced four witnesses who all stated that width of the way was 13 ft. Contrary to it, defendant initially denied the existence of the way then his credibility stand destroyed by his admission of the way. It is also submitted that in the court below the defendant did not prove the measurement of his property to show that the disputed property is covered by the sale deed. It is also submitted that since it was a case of public way, therefore, the court should have inquired into this aspect of the matter with more seriousness.

I considered submission of learned counsel for the appellant and perused the facts mentioned in the impugned judgments as well as the reasoning given by the two courts below.

It is clear from the judgment of the trial court dated 13th March, 1998 that the trial court considered evidence of each of the witnesses in details of all the witnesses including the witnesses produced by the defendant including the defendant's own statement as well as the defendant's document which was the permission granted by the Gram Panchayat to the defendant to raise construction as well as the notices which were issued before granting permission for raising construction and site inspection report. The trial court from the evidence of the plaintiff itself found that the way as alleged by them is not uniform in width at 13 ft. but it is at some places only even 2-3 ft. wide and somewhere it is only 6-7 ft. wide. After appreciation of evidence, the court held that the plaintiff failed to prove that way in front of the house of the defendant

was 13 ft. at any point of time. Since the finding of fact recorded by the two courts below is after appreciation of the evidence and courts below have not misread the evidence or mis-interpreted any document, I do not find any question of law involves in this appeal much less to the substantial question of law, therefore, the appeal is dismissed.

[PRAKASH TATIA],J.

A.K. Chouhan/-